IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA Nos.46 and 47 of 2005

Date of decision:10th January, 2006.

Prabhi Devi & others ... Appellants

Versus

Rajesh Kumar & others ... Respondents.

Coram

The Hon'ble Mr. Justice V.M.Jain,J.
Whether approved for reporting[1]*?*

For the appellants: **Mr.Onkar Jairath, Advocate.**

For the respondents: **Mr.Bhupender Gupta, Sr. Advocate alongwith Mr. Neeraj Gupta, Advocate.**

V.M.Jain, J

This order shall dispose of the afore-mentioned two appeals against the judgments and decrees of the Courts below, whereby the suit filed by the appellants was dismissed and the cross suit filed by the other side was decreed by the trial Court and the appeals filed by the present appellants were dismissed by the learned District Judge.

The facts, which are relevant for the decision of these appeals, are that one suit was filed by the present appellants Smt. Prabhi Devi etc. against the present respondents. It was a suit for declaration and injunction. It was alleged in the said suit that Harnam Singh deceased was the owner in possession of the suit property and that he had expired intestate at Delhi, It was alleged that the defendants were claiming the suit property left by

[1] Whether the reporters of Local Papers may be allowed to see the Judgment?

Harnam Singh, on the basis of a false Will dated 1.9.1993 in favour of defendants No.1 to 3. It was alleged that in fact Harnam Singh deceased had never executed any such Will in favour of defendants No.1 to 3 and the said Will was not valid and was the result of fraud, coercion, misrepresentation and undue influence. It was alleged that Harnam Singh deceased was ill for the last three years prior to his death and was not in a sound disposing mind to execute any such document. It was alleged that the said Will was not binding on the plaintiffs and the said Will was the result of connivance between the marginal witnesses, scribe, Sub Registrar and the defendants. It was further alleged that the suit property was the ancestral co-parcenary property in the hands of Harnam Singh deceased and as such Harnam Singh deceased was not competent to execute the Will in question in favour of the defendants qua the co-parcenary property. It was accordingly prayed that a decree for declaration be passed declaring the parties to be the joint owners in possession of the suit property, on the basis of natural rule of succession on the death of Harnam Singh deceased and the Will in question be declared illegal and void and the result of fraud etc. It was further alleged that in case the said Will was found to be legal and valid, then the plaintiffs were entitled to succeed under Section 6 of the Hindu Succession Act.

The said suit was contested by the defendants by filing written statement taking up various preliminary objections. On merits, it was alleged that during his lifetime Harnam Singh deceased had executed the Will in question dated 1.19.1993 and

the same was got registered at Hamirpur. It was denied that Harnam Singh was not of sound mind at the time of the execution of the Will or that the said Will was the result of fraud, undue influence, misrepresentation and coercion. It was alleged that at the time of the execution of the Will, Harnam Singh was in sound disposing mind and was also in good physical health. It was admitted that the suit property was the co-parcenary property. However, it was denied that Harnam Singh could not Will away the property in favour of his sons.

Aforesaid defendants No.1 to 3 had also filed a cross suit for declaration of title and for possession etc. against the aforesaid plaintiffs and proforma defendants, placing reliance on the aforesaid Will dated 1.9.1993, allegedly executed by Harnam Singh in their favour. The said suit was ordered to be consolidated with the earlier suit. Both the suits were disposed of by the learned trial Court, by a single judgment dated 18.6.2003, vide which the earlier suit filed by Smt. Prabhi Devi etc. was dismissed, whereas the consolidated suit filed by Rajesh Kumar etc. was decreed and a decree for declaration was passed, declaring them to be the owners in possession of the suit property, holding that the Will in question was proved to be legal and valid. The appeals filed by Smt. Prabhi Devi etc. were dismissed by the learned District Judge upholding the findings of the trial Court. Aggrieved against the same, Smt. Prabhi Devi etc. filed the above-mentioned Regular Second Appeals in this Court.

Notice was ordered to be issued to the other side, in both the appeals.

I have heard the learned counsel for the parties in both the appeals and have gone through the record carefully.

The learned counsel appearing for the appellants submitted before me that the respondents had failed to show that Harman Singh was in sound disposing mind at the time when he had allegedly executed the Will in question, in favour of the present respondents. However, I find no force in this submission of the learned counsel for the appellants. I have gone though the evidence led by the parties in this case, with the assistance of the learned counsel for the parties. The only evidence led by the present appellants in their favour was the statement of PW-1 Smt. Kavita Devi, one of the appellants. She deposed that her father was suffering from blood cancer and was heart patient and was under mental tension for the last 5-7 years prior to his death and was unable to distinguish between right and wrong. During cross-examination, she stated that her father had died in a Hospital at Delhi. She stated that her father may have executed the Will dated 19.9.1993, but she did not know. She denied that she had deposed falsely. Except producing PW-1 Smt. Kavita Devi, one of the appellants as PW-1 in this case, no other evidence was led by the appellants to show that Harnam Singh deceased was not in a sound disposing mind at the time when he had executed the Will in question on 1.9.1993 in favour of the present respondents. The respondents examined DW-3 Baldev Singh, one of the attesting witnesses of the said Will and DW-4 Ramesh Kumar, deed writer, who was the scribe of the said Will. DW-3 Baldev Singh, attesting witness, deposed that he

knew Harnam Singh personally as he was from his Village. He deposed that Will Ex.D-1 was executed by Harnam Singh in favour of his sons and that the same was written at the instance of Harnam Singh and it was read over to him and thereafter Harnam Singh had signed the same and thereafter he (Baldev Singh) had also attested the same. He deposed that the said Will was written by Ramesh Kumar, a deed writer. He further stated that the contents of the Will were read over and explained to Harnam Singh and Harnam Singh had admitted the same to be correct and thereafter he (Baldev Singh) and Harnam Singh, besides Satish Kumar, had put their signatures. He further deposed that at the time when the said Will was executed, Harnam Singh was in good health and was in full senses and was not under any pressure. During cross-examination, he showed his ignorance if before his death Harnam Singh was suffering from any ailment or that he had gone week for the last 3-4 years prior to his death nor did he know that he was suffering from blood cancer. He deposed that Harnam Singh was residing at Varanasi for the last 30-35 years and sometimes he used to visit his house in the Village. He denied the suggestion that in the year 1993 Harnam Singh had gone quite week or that his mental condition was not good. He denied the suggestion that a false Will was got prepared, without the consent of Harnam Singh. He showed his ignorance if in the year 1993 Harnam Singh was under pressure from his sons and their mother. He denied the suggestion that Harnam Singh had not got the Will Ex. D-1 prepared. He denied the suggestion that he had deposed falsely. DW-4 Ramesh Kumar deed writer,

deposed that the Will in question was scribed by him at the instance of Harnam Singh and whatever was stated by Harnam Singh, was incorporated in the said Will. He deposed that said Will was read over to Harnam Singh and he had signed the same thereafter and witnesses Baldev Singh and Satish Kumar had also signed the same in his presence. He stated that at that time Harnam Singh was in his senses. During cross-examination, he stated that he did not know Harnam Singh personally nor did he know if at that time he was suffering from blood pressure (cancer) and was under mental tension or not.

From the aforesaid evidence available on the record, in my opinion, it could not be said that Harnam Singh deceased was not in sound disposing mind at the time when he had executed the Will Ex.D-1 in favour of his sons. As referred to above, the scribe and one of the attesting witnesses had categorically stated that Harnam Singh was in sound disposing mind at the time when he had executed the Will and whatever was stated by him, was incorporated in the said Will and Harnam Singh had signed the same (in English) after it was read over and explained to him and the said Will was also attested by two attesting witnesses, including Baldev Singh, who was Up-Pradhan (Vice President) of Gram Panchayat Galot i.e. village of Harnam Singh. The other witness was Satish Kumar, Lamberdar. In my opinion, both the Courts below had rightly found that Harnam Singh deceased was in sound disposing mind at the time when the said Will was executed by him and there is

nothing on the record to show that he was not in sound disposing mind at the relevant time.

It was then submitted before me by the learned counsel for the appellants that while executing the Will in favour of his sons, Harnam Singh deceased had ignored his wives and his daughters and as such no reliance could be placed on the said Will, as the same was shrouded with suspicious circumstances. However, I find no force in this submission as well of the learned counsel for the appellants. I have gone through the copy of the Will Ex.D-1, with the assistance of the learned counsel for the parties. In the said Will, it was got incorporated by Harnam Singh deceased that he had three sons namely, Rajesh Kumar Singh, Sanjeev Kumar Singh and Manjeet Singh and that he was giving his entire property to his aforesaid sons and they would be the owners of his property after his death. He also got it recorded that he had two wives and he had deposited money in their Bank accounts. It was further got recorded by him in the said Will that he had six daughters, out of whom five daughters were already married and he had given sufficient dowry etc. and they were happily settled in their houses and the marriage of his sixth daughter would be the responsibility of his sons Rajesh Kumar etc. It was also got recorded by him in the Will that for the aforesaid reasons he had not given any property to his wives and his six daughters and that they would have no concern with his property.

From a perusal of the aforesaid averments made in the Will Ex. D-1, in my opinion, it would be clear that while

executing the Will in favour of his sons, Harnam Singh deceased had taken care not only of his two wives but also of his six daughters, inasmuch as, he had deposited money in the Bank accounts of his wives and out of six daughters he had already married his five daughters and sufficient dowry was given in their marriages and they were happily settled in their houses, whereas the marriage of his sixth daughter was the responsibility of his sons. Harnam Singh deceased having taken care of his two wives by depositing money in their Bank accounts and his unmarried daughter by putting the entire responsibility of her marriage on his sons, in my opinion, it could not be said that Harnam Singh had not taken care of his wives and daughters, especially when five out of his six daughters were already married and were living happily in their houses and sufficient dowry was given to them.

The contention of the learned counsel for the appellants that nothing has come on the record to show that any money was deposited in the Bank account of plaintiff No.1 Smt. Prabhi Devi (widow of Harnam Singh deceasd), in my opinion, is devoid of any force. Deposit of money in the Bank account of Smt. Prabhi Devi appellant No.1 was in the personal knowledge of either Harnam Singh deceased or appellant No.1 Smt. Prabhi Devi (widow of Harnam Singh deceased). In order to show that no money was deposited by Harnam Singh deceased in her Bank account, it was for Smt. Prabhi Devi to have produced cogent evidence in this regard, inasmuch as, no evidence could be led by the other side to prove the deposit of money. In the present

case, as referred to above, Smt. Prabhi Devi did not appear in the witness box and the only evidence led by the appellants was the statement of PW-1 Kavita Devi, one of the daughters of Harnam Singh and one of the plaintiffs in the suit filed by Smt. Prabhi Devi etc . She simply stated during examination-in-chief that no money was deposited by their father in the name of their mother. During cross-examination, she stated that their mother had come to the Court on that day. Inspite of the fact that Smt. Prabhi Devi had attended the Court on 20.9.2001, when the statement of PW-1 Smt. Kavita Devi was recorded, yet, for reasons best known to her, Smt. Prabhi Devi had not appeared in the witness box to depose that no money was deposited by Harnam Singh deceased in her Bank account. As referred to above, the fact as to whether any money was deposited by Harnam Singh deceased in the Bank account of Smt. Prabhi Devi, was in the personal knowledge of Smt. Prabhi Devi and she was the only competent witness to depose in this regard. However, Smt. Prabhi Devi failed to appear in the witness box to depose anything in this regard. Furthermore, it had nowhere come in the statement of PW-1 Smt. Kavita Devi that Smt. Prabhi Devi did not have a bank account. In the absence thereof, in my opinion, the bald testimony of Smt. Kavita Devi that he (Harnam Singh) had not deposited any money in the name of their mother, in my opinion, cannot be accepted. This is especially so, when this denial had not come from the mouth of Smt. Prabhi Devi. Furthermore, as referred to above, Smt. Prabhi Devi could have deposed as to whether she had any Bank account or not and if she had any

Bank account, whether any money had been deposited by Harnam Singh deceased or not, in her Bank account. In the absence of any such material on the record, from the side of the appellants, in my opinion, it could not be said that Harnam Singh deceased had not taken care of his wives while executing the Will in favour of his sons.

No other point has been urged before me in these appeals.

In view of the detailed discussion above, in my opinion, no fault could be found with the findings of the Courts below holding that Harnam Singh had executed a valid Will in favour of his sons and there is no scope for interfering with these findings in these Regular Second Appeals, especially when no question of law, much less a substantial question, arises for determination in these appeals.

For the reasons recorded above, finding no merit in these appeals, both the appeals are hereby dismissed.

10th January, 2006 (V.M.Jain),J.
(SDS)